

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

W.P. No. 466/2004 filed by Smt. M. Jyothi, Un-Aided Lecturer in Commerce, Sarada College, Vijayawada, Krishna District –Implementation of Hon'ble Court orders dated 09.12.2010 - Regularization of Services – Orders – Issued.

HIGHER EDUCATION (CE.II-1) DEPARTMENT.

G.O.Rt.No. 482

Dated: 18-07-2011.
Read the following:-

1. C.C.E.'s Procds Rc. No. 2236/PC I-4/95, dated 10.06.1997.
2. C.C.E.'s ProCds L.Dis No.1018/ Admn.VI-1/2003 dated 16.12.2003
3. Orders dated 05.03.2004 of the Hon'ble High Court in W.P.No.13075/1997 filed by Smt. M. Jyothy, Un-aided Lecturer in Commerce, Sarada College, Vijayawada, Krishna District
4. Govt.Memo.No.3374/CE-I-1/2004-12 Higher Education(CE.II) Dept., dated 06.04.2005.
5. Orders dated 09.12.2010 of the Hon'ble High Court in W.P.No. 466/2004.
6. Government Memo No. SP 4825/CE.II-1/2004-5 Higher Education (CE.II) Department, Dated 12.01.2011.
7. C.C.No. 111 /2010 in W.P. No. 466/2004 filed by Smt. M. Jothy, Un-aided Lecturer in Commerce, Sarada College, Vijayawada, Krishna District.

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O R D E R:-

Smt. M. Jyothi, was appointed as un-aided Lecturer in Commerce, Sarada College, Vijayawada, Krishna District against the un-aided post duly selected by a properly constituted Selection Committee in terms of G.O.Ms.No.12 Education, dated 10.01.1992. She had joined duty in the College on 26.11.1992. The said appointment it-self was clearly against unaided post. Thus she has no locus standi to claim the aided post as she has voluntarily accepted the appointment against the un-aided post way back in 1992 itself. Smt. M. Jyothi, was selected and appointed against the post for Un-aided Sections. The Sections that were started after 01.03.1985 cannot be considered for absorption against the aided vacancies, since the sections which started after 01.03.1985 were permitted subject to the conditions that they would not be considered for admission to Grant-in-aid either now or in future. It has been clearly laid down in Act 22 of 1988 that no private educational institution other than a college established after 01.04.1977 and existing as on 1st September, 1985 and private college established after 01.04.1977 and existing as on 1st March, 1985 shall be entitled to claim or receive any Grant-in-aid.

2. When in Procs.Rc. No. 2236/PC.I-4/97-5 dated 10-06-1997 the 2nd respondent Commissioner of Collegiate Education issued orders re-deploying one Smt. Y. Jayashree, aided surplus lecturer in Commerce of Montessori Mahila Kalasala, Vijayawada, to work on deputation against one aided vacancy at the 3rd respondent college, Smt. M.Jyothi aggrieved by the above proceedings clearly not related to her un-aided post, had filed W.P.No. 13075/97, on the erroneous ground that being senior most lecturer in the commerce Department she is entitled to be absorbed in an aided vacant post, as and when such a vacancy arises.

3. While making such untenable claims she has deliberately not mentioned the distinction between aided and un-aided Lecturers and that her seniority claimed in un-aided Section has no bearing as per rules on any vacancy in aided section of said college. It is also pertinent to note that the said re-deployment was ordered with clear condition that failure to follow said orders by the Sarada College (wherein Smt. M. Jhathi was working) would lead to action as per A.P. Education Act, 1982 besides abolishing the aided vacant post. Thus, not only Smt. M. Jyothi was not having any right on said aided post but even the Management had no other right except to fill up the said vacancy by re-deployment of surplus aided staff as per the C.C.E.'s proceedings Rc.No. 2236/PC1-4/95, dated 10.06.1997. Moreover, in the said proceedings, it is clearly directed to furnish the salary statement to the Regional Joint Director of Collegiate Education to enable its approval so that salary can be claimed at the new station by the re-deployed staff. Thus, the said vacancy has been filled up in 1997 and ceased to be a vacancy thereafter. Hence the claim of Smt.M.Jyothi against non-existent vacancy was totally untenable. Therefore, she had no basis or right to question the order of surplus redeployment issued in respect of Smt. Y. Jayashree, as they have been not only issued as per G.O. Ms. No. 890 Education (CE.II-1) Dept., dt. 2-8-1996 wherein the Government issued guidelines for redeployment of surplus lecturers but being un-aided lecturer has no right or claim on aided posts under any provisions of her appointment as un-aided lecturer.

4. It is pertinent to point out here about the workload of Commerce Department in Sarada College, Vijayawada. There are two Sections in B.Com one each in English medium and Telugu medium. There were 6 posts sanctioned for Commerce under Aided Sections at the time of admission into Grant-in-aid. Thereafter, management appointed 5 Lecturers and choose to keep the sixth one vacant from 1990 onwards. In the year 2006 the management surrendered one post in Commerce department due to promotion of a Commerce Lecturer as Principal as per G.O. Ms. No. 35 Higher Edn., (CE.II-1) Dept, dated 27.03.2006. Thus the sanctioned posts have been reduced to 5. Meanwhile the redeployed surplus lecturer was repatriated and the post again became vacant from 01.01.2004. The management again did not choose to fill up this post for over 2 years and in 2006 the ban on filling up aided vacancies has come into force.

5. Aggrieved by the redeployment orders issued in C.C.E.'s proceedings Rc.No.2236/PCI-4/95, dated 10.06.1997 Smt. M. Jyothi filed W.P.No. 13075/97. The Hon'ble High Court on 5-3-2004, while disposing of W.P.No. 13075/97 filed by the petitioner directed the respondents "**to consider the claim of the petitioner for absorption against the clear vacancy of aided post of lecturer in commerce in 3rd respondent college (Sarada College, Vijayawada) due to repatriation of Smt. Y. Jayashree, Lecturer in Commerce to her parent institution and to pass appropriate orders in accordance with law within a period of 8 weeks**".

6. In pursuance to the above directions of the Hon'ble High Court, the request of Smt. Jyothi has been examined and her claim was rejected for absorption against aided post vide Government Memo.No.3374/CE.II-1/2004-12, dated 06.04.2005. On the said orders of the Government Smt.M. Jyothi filed C.C.272 of 2005 for non-compliance of orders of the Hon'ble High Court dated 05.03.2005 in W.P.No.13075 of 1997. The Hon'ble High Court dismissed the C.C.No.272/2005 on 27.05.2005 observing that the case has already been considered and orders have been complied with. Thus rejection orders remained in-force till the issue was raised by her afresh before the Hon'ble High Court.

7. While the matter concluded with rejection of her claim in the first round of litigation, Smt. M. Jyothi herein filed fresh W.P.No.466/2004 seeking to prevent the authorities from redeploying surplus aided lecturer in Commerce to her college even though the said process is clearly laid down in G.O. Ms. No. 890 Higher Education (CE.II-1) Dept., dated 02.08.1996 for aided posts over which an un-aided lecturer has no claim under any provisions of her appointment, as already upheld by dismissal of her earlier contempt case.

8. The Hon'ble High Court, on W.P.No.466/2004 while making certain observations on the educational scenario in the State, has "directed to pass appropriate orders in the case of the petitioner, with in a period of two weeks from to day i.e. 09.12.2010, failing which, hearing of the matter would be resumed and the issue would be dealt in depth."

9. In pursuance of the orders of the Hon'ble High Court dated 09.12.2010 in W.P.No.466/2004, the Government has examined afresh the case on various grounds and issued orders rejecting the request of Smt. M. Jyothi, un-aided Lecturer in Commerce in 3rd respondent college vide Government Memo.No. SP 4825/CE.II-1/2004-5 Higher Education (CE.II-1) Department, dated 12.01.2011 on the grounds that:-

- i. Smt.M.Jyothi, Lecturer in Commerce was appointed in an un-aided post and the salary of the petitioner shall be paid by the management only and there should not be any financial commitment on the part of the Government if any person is appointed in un-aided vacancy.
- ii. Government issued orders in G.O.Ms.No.35, Higher Education (CE.II.1) Dept., dated 27.03.2006 to the effect that:-
 - a. There would be a general ban on filling up vacant aided posts in Private Aided Junior/Degree Colleges and Polytechnics through direct recruitment, except in respect of SC/ST backlog vacancies.
 - b. Vacant aided posts in Colleges and Polytechnics may be filled up by way of recruitment by transfer/promotion of an aided employee working in an aided post as per existing service rules, subject however to the condition that the resultant vacant aided post in the lower cadre shall be taken out of Grant-in-Aid.
 - c. The benefit of G.O.Ms.No.212, Finance, dated 22.04.1994 read with U.O.Note No.24714/A3/PC.III/1998, Fin., Dept., dt.21.8.1998 to those non-teaching staff in Aided Educational Institutions who satisfy the conditions prescribed therein will continue.
- iii. The number of students getting admitted in Private Aided Colleges/ other Degree Colleges is drastically going down over the years, as most of the students after completion of their Intermediate Course are opting for Engineering/Medical and other professional courses. This has resulted in rendering more number of surplus lecturers in the Aided Degree Colleges. Already in the year 2006-07, 226 surplus working lecturers against aided posts have been redeployed to needy colleges. Still there are 298 surplus lecturers working against aided posts as on 2009-10 in Private Aided Colleges spread over the State and they have to be redeployed in the needy colleges.

- iv. Hon'ble Supreme Court in State of Assam Vs Ajit Kumar Sarma has held that no mandamus could be issued against the State directing it to provide what grants the State should make to private educational institutions and upon what terms or matters for the State to decide and in the absence of any statutory provision governing such grant no mandamus could be issued directing the State to provide Grant-in-Aid.
 - v. Following the said judgment, a Division Bench of Hon'ble High Court of A.P., has observed in its order dated 07.11.2005 in W.P.No.8697 of 2005 between Sri.Y.Sidda Reddy Vs. Government of A.P., and others that no private educational institution or any employee or such a Educational Institution has a legal right to compel financial assistance by the State.
 - vi. As per Section 46 (1) of A.P. Education Act, 1982, Govt., is empowered to with-hold or reduce or withdraw any grant payable to an educational institution having regard to the funds at the disposal of the Government or the conduct and efficiency and financial condition of such institution.
 - vii. In the event of considering the request, there would be huge financial burden on the State exchequer cumulatively as similar cases may trigger off and that is why it is considered policy of the Government not to consider such requests, as the two channel of posts are totally separate and not inter convertible.
 - viii. Moreover, it is not the case of the petitioner that any injustice has been done to her vis-a-vis other similarly placed individuals, it is also not the case of the petitioner that any denial of opportunity has been caused to her as she has been employed against the post for which she herself applied as per open procedure. Therefore, even on these counts no case for relief sought for by her arises in the aforesaid circumstances.
10. Further, it is mentioned here that the Chief Secretary on the order passed in W.P.No.98/2004, while explaining the stand of the Government and steps taken for review of G.O.Ms.No.35 Higher Education (CE.II-1) Dept., dated 27.03.2006 has submitted to the Hon'ble High Court that :-
- "Government in G.O. Rt.No. 890 Education (CE.II-1) Department, dated 02.08.1996 had formulated guidelines for transfer of surplus Lecturers /Junior Lecturers in Private Aided Degree/ Junior Colleges to needy Colleges.
11. Subsequently, in G.O. Rt. No. 962 Education (CE.II-1) Department, dated 10.06.1997 Government had issued orders for transfer of surplus Lecturers working in Private Aided Colleges to the needy Colleges. In orders to rationalize and relocate the surplus Lecturers to needy college, an exercise was undertaken and 226 Lecturers working in different subject were identified in the year 2006-2007. On the proposal submitted by the Commissioner of Collegiate Education for rationalization and relocation of 226 surplus identified Lecturers, the permission has been accorded in Government Memo No.12955/CE.II-1/2005 dated 17.01.2006, and accordingly 226 surplus Lecturers have been re-deployed to the needy colleges. This exercise was taken up exclusively keeping the student community at large in view.

12. The Number of students getting admitted in Private Aided Degree Colleges / other Degree Colleges is drastically going down over the years as most of the students after completion of their Intermediate Course are opting for Engineering / Medical and other professional courses. This has resulted in rendering more number of surplus Lecturers in the Aided Colleges. Out of the 298 surplus Lecturers identified in various Private Aided Degree Colleges there is maximum surplus even in the subjects of demand like Physics, Chemistry, Mathematics, Economics, and English etc. Some of the managements have even closed down the colleges due to the lack of admissions. The following are some of the College, which are defunct / closed down.

- i. Gudlavalleru College, Krishna District.
- ii. NVC & NBT College, Narsaraopet, Guntur District
- iii. Sanghi College, Tarnaka, Hyderabad
- iv. A.K. Navajeevan Women's College, Hyderabad
- v. S.G.L. College, Vijayawada, Krishna District.

13. Government issued orders in G.O.Ms.No.35, Higher Education (CE.II.1) Dept., dated 27.03.2006 to the effect that:-

- a. There would be a general ban on filling up vacant aided posts in Private Aided Junior/Degree Colleges and Polytechnics through direct recruitment, except in respect of SC/ST backlog vacancies.
- b. Vacant aided posts in Colleges and Polytechnics may be filled up by way of recruitment by transfer/promotion of an aided employee working in an aided post as per existing service rules, subject however to the condition that the resultant vacant aided post in the lower cadre shall be taken out of Grant-in-Aid.
- c. The benefit of G.O.Ms.No.212, Finance, dated 22.04.1994 read with U.O.Note No.24714/A3/PC.III/1998, Finance Dept., dt.21.8.1998 to those non-teaching staff in Aided Educational Institutions who satisfy the conditions prescribed therein will continue.

14. In order to see that no hindrance is caused to the academic work in needy Private Aided Colleges, the Government has been permitting the management for promotion of Junior Lecturers working in the Junior Colleges under the same management to cope with the academic work in Degree Colleges.

15. Similarly, Government has been granting permission to the managements of Private Aided Degree Colleges for filling up of the vacant posts for SC / ST under back-log vacancies by way of direct recruitment.

16. Further exercise has already been commenced and the surplus Lecturers already identified will be redeployed to the needy colleges. Thus the Government is taking every care for adjustment of the lecturers to needy colleges, in the interest of students community at large.

17. Therefore, the Government would identify the requirement of Lecturers in various Aided Degree Colleges taking into consideration the admissions given in this academic year i.e. 2010-11 and would redeploy the identified surplus of 298 Lecturers. After such an exercise if there is a gap the necessity to reviewing the G.O.Ms.No. 35 Higher Education (CE.II-1) Department, dated 27.03.2006 or the levy of fee by the managements of Private Aided Colleges, to augment the teaching staff positions as observed by the Hon'ble High Court in its order dated 09.12.2010 in W.P. No. 98 of 2004 shall be taken up for a policy decision".

18. Thus the state Government has taken up the above mentioned steps taking into consideration the administrative, financial and other incidental issues.

19. Further, the issue of G.O.35 was discussed in the review meeting held on 11.05.2011 with the Hon'ble Chief Minister with regards to the ban on recruitment of the aided staff of Private Aided Colleges wherein it was resolved to discuss the issue in the Group of Ministers for taking a decision regarding review of the G.O. and modalities for filling up the posts. Thus, the Government has made every effort possible within its means to comply with the directions of the Hon'ble Court.

20. While the matter stood thus the Chairman, State Un-aided Lecturers Association and others have filed a petition before the Hon'ble Human Rights Commission stating that more than 3000 Lecturers are working in 179 Aided Colleges who are working on aided posts but not admitted to grant in aid. The petitioner further stated that the Government under regularization scheme proposed to bring Lecturers from other Colleges to fill-up the vacancies in the present Colleges, where the petitioner are working ignoring the requests for their regularization, though they have put in a long service of 2 to 15 years.

21. On the said petition, the State Human Rights Commission directed to enquire on the request of Un-aided Lecturers Association and to file detailed reports before the Commission by 13.06.2011. Commission also directed the Government to keep the rationalization Scheme under abeyance, till the application of the petitioners are considered. Pursuant to the said directions a report has been submitted to the Human Rights Commission on 02.06.2011 with a request to vacate the said abeyance orders.

22. It is a fact that as observed by the Hon'ble High Court in its order dated 09.12.2010 in W.P.No. 66/2004 the cases of Lecturers referred to therein have been considered by the Government and the services of those Lecturers were absorbed and admitted to Grant-in-aid. The case of Smt. M. Jyothi, un-aided Lecturer in Commerce is also similarly situated.

23. Aggrieved by the rejection orders issued in Government Memo No.SP 4825/CE.II-1/2004-5 Higher Education (CE.II) Department, dated 12.01.2011, Smt. M. Jyothi filed Contempt Case No. 111 of 2011 in the Hon'ble High Court and the Hon'ble High Court passed orders for personal appearance of the first and second respondent (Principal Secretary to Government, Higher Education Department and Commissioner of Collegiate Education, A.P. Hyderabad) on 11.03.2011 and 28.04.2011. A Writ Appeal has been preferred in the Hon'ble High Court vide W.A.S.R. No. 53701 of 2011 on 15.04.2011 and the same is pending.

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24. In the aforesaid circumstances and in view of the Contempt Case filed by the Smt. M. Jyothi her case for regularization has been reviewed on par with the cases of regularization of Lecturers took place earlier, as observed by the Hon'ble High Court and it is decided to absorb her into Grant-in-aid as she is also similarly situated, against the existing Aided vacant post of Lecturer in Commerce in any of the nearby aided Degree Colleges, as there is no clear vacant post in her parent college, subject to outcome of the Writ Appeal in W.A.S.R. No. 53701 of 2011 and final orders of the Hon'ble High Court in W.P. No. 466 of 2004 from the date of issue of orders as a special case and the case should not be quoted as a precedent.

25. The Commissioner of Collegiate Education shall take necessary action accordingly.

26. This order issued with the concurrence of Finance (Expenditure) Dept., vide their U.O. Note No.18942-C/426/PC.III/A1/2011, dated 14-07-2011.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

M.G. GOPAL,
PRINCIPAL SECRETARY TO GOVERNMENT.

To

The Commissioner of Collegiate Education, A.P., Hyderabad.
The individual "thro" Commissioner of Collegiate Education, A.P. Hyderabad.
The Advocate General, High Court of Andhra Pradesh, Hyderabad.
The Addl. Advocate General, High Court of Andhra Pradesh, Hyderabad.
The Government Pleader for Higher Education, High Court of A.P., Hyderabad.
The Accountant General (A&E), A.P., Hyderabad.
The Director of Treasure and Accounts, Hyderabad
The District Treasure Office, Krishna District.

Copy to:-

Finance (Expr.HE) Dept.
Finance (PC.III) Dept.
P.S. to Spl. Secy to C.M.
P.S. to Dy.C.M.
P.S. to Prl. Secy (HE)
SF/SC.

// FORWARDED :: BY ORDER //

SECTION OFFICER.